



December 21, 2001

Mr. Brett Bray  
Division Director  
Motor Vehicle Division  
Texas Department of Transportation  
P.O. Box 2293  
Austin, Texas 78768

OR2001-6072

Dear Mr. Bray:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156473.

The Texas Department of Transportation (the "department") received a request for the dealer license number for a specified dealer, as well as "whatever other information" the department is able to provide to the requestor. You claim that portions of the submitted information are excepted from disclosure pursuant to sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Initially, we note that you notified two third parties whose proprietary interests may be implicated by the request, "Cherri Fields Lewis d/b/a MPG Auto Sales" and "Allen Khosrow Almassi d/b/a Royal Motors," of the request pursuant to section 552.305 of the Government Code. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); *see also* Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances).

We note that an interested third party is allowed ten business days after the date of its receipt of the governmental body's notice under section 552.305(d) to submit its reasons, if any, as to why information relating to that party should be withheld from disclosure. *See* Gov't Code § 552.305(d)(2)(B). As of the date of this letter, neither party notified by the department has submitted comments to this office. Thus, neither party has demonstrated that any portion of the submitted information should be withheld as proprietary information. *See* Open Records Decision Nos. 552 at 5 (1990) (stating that if governmental body takes no

position, attorney general will grant exception to disclosure under statutory predecessor to Gov't Code § 552.110(a) if third party makes *prima facie* case that information qualifies as trade secret under section 757 of Restatement of Torts, and no argument is presented that rebuts claim as matter of law), 661 at 5-6 (1999) (stating that business enterprise that claims exception for commercial or financial information under Gov't Code § 552.110(b) must show by specific factual evidence that release of requested information would cause that party substantial competitive harm).

Next, we address your claim that some of the submitted information is excepted from disclosure under section 552.130 of the Government Code. In Open Records Letter No. 2001-4775 (2001), we concluded that the department could withhold from disclosure Texas driver's license numbers, Texas vehicle identification numbers, Texas dealer plate numbers, and social security numbers that appear on application materials for licenses issued by the department that authorize applicants to maintain motor vehicle dealerships, without the necessity of again requesting a decision from our office with respect to these types of information. Accordingly, we conclude that the department must withhold from disclosure the Texas driver's license numbers, Texas vehicle identification numbers, and Texas dealer plate numbers contained within the submitted information in accordance with Open Records Letter No. 2001-4775 (2001). *See* Gov't Code § 552.301(f); *see also* Open Records Decision No. 673 (2001).

We note that the social security numbers that are contained within the submitted information are now made confidential by section 56.001 of the Occupations Code. *See* Occ. Code § 56.001. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information protected from disclosure by other statutes. Section 56.001, as enacted by the Seventy-seventh Legislature, provides as follows:

The social security number of an applicant for or holder of a license, certificate of registration, or other legal authorization issued by a licensing agency to practice in a specific occupation or profession that is provided to the licensing agency is confidential and not subject to disclosure under Chapter 552, Government Code.

Act of May 22, 2001, 77<sup>th</sup> Leg., R.S., § 14.001(a), 2001 Tex. Sess. Law Serv. 3970, 4098 (Vernon's) (to be codified as Occ. Code § 56.001).<sup>1</sup> You indicate that the department obtained the social security numbers that appear in the submitted documents in connection with the issuance of a license. Accordingly, we find that the social security numbers

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<sup>1</sup>The language of section 56.001 of the Occupations Code corresponds in substance to the language of the former note to section 51.251 of the Occupations Code. House Bill No. 2812, which enacted section 56.001, also repealed the note to section 51.251. *See* Act of May 22, 2001, 77<sup>th</sup> Leg., R.S., § 14.001(b), 2001 Tex. Sess. Law Serv. 4098 (Vernon's) (repealing section 1, chapter 314, Acts of the 76<sup>th</sup> Legislature, Regular Session, 1999).

contained within the submitted information are confidential under section 56.001 of the Occupations Code and, thus, must be withheld from disclosure pursuant to section 552.101 of the Government Code.

You claim that portions of the submitted information may be excepted from disclosure pursuant to section 552.101 in conjunction with the common-law right to privacy. Section 552.101 also encompasses information protected from disclosure under the common-law right to privacy. Information is protected under the common-law right to privacy when (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *See Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Prior decisions of this office have found that personal financial information not relating to a financial transaction between an individual and a governmental body is protected by common-law privacy. *See* Open Records Decision Nos. 600 (1992), 545 (1990). Based on our review of the submitted information, we have marked the information that is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with the common-law right to privacy.

In summary, the department must withhold from disclosure the Texas driver's license numbers, Texas vehicle identification numbers, and Texas dealer plate numbers contained within the submitted information in accordance with Open Records Letter No. 2001-4775 (2001). The department must withhold from disclosure the social security numbers contained within the submitted information pursuant to section 552.101 of the Government Code in conjunction with section 56.001 of the Occupations Code. The department must withhold from disclosure the information that we have marked pursuant to section 552.101 in conjunction with the common-law right to privacy. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/sdk

Ref: ID# 156473

Enc. Marked documents

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